APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

~~72~~-782

NO. [redacted]

GATEWAY COAL COMPANY, Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petition for a Writ of Certiorari Filed November 28, 1972
Certiorari Granted February 26, 1973

SMITH BROS., LAW PRINTERS, 620 SECOND AVENUE, PITTSBURGH, PA. 15219

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APPENDIX

Chronological List of Relevant Docket Entries

June 16, 1971 — Plaintiff Gateway Coal Company's Complaint filed in the United States District Court for the Western District of Pennsylvania.

June 18, 1971 — Hearing on temporary restraining order and Order enjoining work stoppage and ordering arbitration with suspension of two assistant line foremen.

June 23, 1971 — Hearing on preliminary injunction and order of court continuing the Order of June 18, 1971.

June 28, 1971 — Memorandum and Order of court converting the temporary restraining order of June 18, 1971, into a preliminary injunction filed.

July 6, 1971 — Answer and Counterclaim of Local Union No. 6330, United Mine Workers of America, filed.

July 16, 1971 — Notice of Appeal by defendants, United Mine Workers of America and District 4, United Mine Workers of America, filed.

July 20, 1971 — Answer to counterclaim of Local Union No. 6330, United Mine Workers of America, filed by plaintiff.

August 30, 1971 — Notice of Appeal received July 20, 1971 by defendant Local Union No. 6330, United Mine Workers of America, filed.

September 2, 1971 — Umpire Decision and Award rendered.

October 27, 1971 — Order of the District Court, dated October 26, 1971, denying motion of Local Union

Relevant Docket Entries.

No. 6330, United Mine Workers of America, to stay Order of June 28, 1971 or in the alternative to increase injunction bond, filed.

November 9, 1971 — Order granting appellees' motion to consolidate appeals filed.

February 11, 1972 — Order of the Court of Appeals for the Third Circuit striking appellee's supplemental appendix filed.

July 18, 1972 — Opinion of the Court of Appeals for the Third Circuit with separate dissenting opinion by Rosenn, C.J., filed.

July 18, 1972 — Judgment of the Court of Appeals for the Third Circuit filed.

July 31, 1972 — Petition for Rehearing filed.

August 30, 1972 — Order denying Petition for Rehearing filed.

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GATEWAY COAL COMPANY, Plaintiff, v. UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; LOCAL NO. 6330, UNITED MINE WORKERS OF AMERICA, Defendants.	Civil Action No. 71 587

Complaint

Gateway Coal Company complains of the Defendants as follows:

1. This Court has jurisdiction of this claim under Section 301 of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. Section 185.

2. Plaintiff, Gateway Coal Company, is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania. Through its Gateway Mine located in Greene County, Pennsylvania, Plaintiff is engaged in the mining of coal which is used in the production of steel and coal chemicals within the Western District of Pennsylvania and is engaged in an industry affecting commerce as defined in the Labor-Management Relations Act, 1947.

3. Defendant, United Mine Workers of America, is an unincorporated labor organization having its principal office at 900 Fifteenth Street, N. W., Washington, D. C. Its duly authorized officers or agents are engaged

in representing or acting for certain employees of the Plaintiff (hereinafter referred to as "employee-members") within the Western District of Pennsylvania for the purpose of collective bargaining.

4. Defendant, District No. 4, United Mine Workers of America, is an unincorporated labor organization and an administrative division of the United Mine Workers of America having an office in the Gallatin National Bank Building, Uniontown, Pennsylvania, within the Western District of Pennsylvania and is engaged in representing and acting for employee-members at Plaintiff's Gateway Mine (hereinafter referred to as "Gateway") located at Clarksville, Greene County, Pennsylvania, for the purpose of collective bargaining.

5. Defendant, United Mine Workers of America, Local No. 6330, is an unincorporated labor organization, and is a local labor union of Defendant, United Mine Workers of America. Local Union No. 6330 maintains its office in care of Raymond Rohrer, Recording Secretary, Box 470, Clarksville, Greene County, Pennsylvania, and is engaged in representing and acting for employee-members at Gateway for the purpose of collective bargaining.

6. For many years Defendants, United Mine Workers of America, District No. 4 United Mine Workers of America and United Mine Workers of America Local No. 6330 have represented the maintenance and production employees of Plaintiff at Gateway for purposes of collective bargaining and have entered into labor agreements covering wages, hours and other conditions of employment for the approximately 580 employees employed by Plaintiff at Gateway.

7. The collective bargaining agreement between the Plaintiff and the Defendants covering said production and maintenance employees is the National Bituminous Coal Wage Agreement of 1968 which became effective on October 1, 1968, and by its terms, continues in full force and effect until September 30, 1971.

8. The 1968 Labor Agreement contains a detailed grievance procedure and an arbitration provision reading as follows:

"SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

"Should differences arise between the Mine Workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately. (The parties will not be represented by legal counsel at any of the steps below.)

"1. Between the aggrieved party and the mine management.

"2. Through the management of the mine and the mine committee.

"3. Through district representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

"4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the operators. Neither the Mine Workers' representatives on the board nor the operators' representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

"5. Should the board fail to agree the matter shall, within twenty (20) days after decision by the board, be referred to an umpire to be mutually agreed upon by the operator or operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the operator or operators affected and by the Mine Workers.

"A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement."

9. The 1968 Labor Agreement provides for compulsory, final and binding arbitration of ". . . differences between the Mine Workers and the operators as to the meaning and application of the provisions of [said] agreement . . ." and ". . . differences . . . about matters not specifically mentioned in [said] agreement . . ." and ". . . any local trouble of any kind [arising] at the mine . . . ." The provisions of said collective bargaining agreement clearly entitle the Plaintiff to an injunction under the provisions of Section 301 of the Labor-Management Relations Act, 1947, to enforce the Defendants' contractual duty, which duty is also binding on the Plaintiff, to submit "differences" and "local trouble of any kind" to terminal arbitration and to require the Defendants to refrain from striking over them.

10. Since June 1, 1971, at or about 12:01 a.m., Defendants, United Mine Workers of America, District No. 4, United Mine Workers of America, United Mine Workers of America Local No. 6330 through their employee-members, in violation of the 1968 Labor Agreement, have engaged in an illegal work stoppage in that employee-members of said Defendants had refused to report for work at Gateway as scheduled. The work stoppage is continuing. The employee-members of Defendants have notified Plaintiff that the illegal work stoppage occurred because the Defendant Local No. 6330 had passed a resolution that its employee-members would not work with certain Assistant Mine Foremen designated and assigned by the Plaintiff to act as Supervisors at Gateway.

11. Notwithstanding the provisions of the 1968 Labor Agreement requiring Defendants to follow the grievance procedure for the settlement of local disputes, Defendants have failed and refused, and still fail and refuse, to honor their contract commitments.

12. Plaintiff has advised Defendants, their officers and their employee-members of its willingness to submit the dispute giving rise to the illegal work stoppage to immediate arbitration, but Defendants have refused to arbitrate the dispute, in violation of their obligations under the 1968 Labor Agreement.

13. As a result of the continuing illegal work stoppage, Plaintiff has been deprived of the use, benefit and production of the Gateway Mine, resulting in the daily loss of in excess of 8,500 tons of washed coal.

14. In addition, Plaintiff is threatened with an enormous loss because the continuation of this illegal

work stoppage could in time force a curtailment of production in Plaintiff's coke, chemical, iron and steelmaking in Ohio and Pennsylvania. This illegal work stoppage could result in unemployment of steelworkers and extensive monetary losses.

15. Plaintiff has suffered and will continue to suffer, immediate and irreparable harm and injury. Plaintiff has no adequate remedy at law for Defendants' refusal to utilize the procedures to which the parties agreed for the settlement or resolution of local and district disputes in the 1968 Labor Agreement, and greater injury will be inflicted upon Plaintiff by the denial of an injunction than upon Defendants by the granting of such relief.

WHEREFORE, Plaintiff prays:

1. That a Temporary Restraining Order be issued forthwith, and that after hearing a Preliminary Injunction be issued, to be made permanent on final hearing, enjoining Defendants, their officers, representatives, and members, and all persons acting in concert with Defendants, or on their behalf, from:

(a) Engaging, or continuing to engage, in a strike or work stoppage at Plaintiff's Gateway Mine located in Greene County, Pennsylvania;

(b) Picketing, or in any other manner interfering with the orderly resumption of, or continuation of, operations at Plaintiff's Gateway Mine, located in Greene County, Pennsylvania.

2. That Defendants, District No. 4, United Mine Workers of America, and Local No. 6330, their officers, representatives, members, and Plaintiff, be directed and required to utilize the "Settlement of Local and District

Disputes" provision on page 14 of the National Bituminous Coal Wage Agreement of 1968 for the settlement of any differences at Plaintiff's Gateway Mine, located in Greene County, Pennsylvania.

3. That Defendants' officers and representatives be directed to take all action which may be necessary to assure compliance with the terms of the 1968 Labor Agreement, and to bring an immediate end to the work stoppage and strike at Plaintiff's Gateway Mine, located in Greene County, Pennsylvania.

4. That compensatory damages be awarded to Plaintiff against Defendants in such amount as the Court shall determine to be due and owing.

5. That Plaintiff be awarded such other and further relief as the Court may deem just and which Plaintiff may request.

LEONARD L. SCHEINHOLTZ
HENRY J. WALLACE, JR.
REED SMITH SHAW & MCCLAY
747 Union Trust Building
Pittsburgh, Pennsylvania 15219
Counsel for Plaintiff,
Gateway Coal Company

Of Counsel:
DANIEL R. MINNICK

National Bituminous Coal Wage Agreement of 1968

EFFECTIVE OCTOBER 1, 1968

(Plaintiff's Exhibit No. 1; R. 12, 185-211)

(Relevant Excerpts)

* * * * * * *

MINE SAFETY PROGRAM

(a) *Mine Safety Code*

The Federal Mine Safety Codes for Bituminous Coal and Lignite Mines of the United States, Part I—underground mines and Part II—strip mines, promulgated and approved October 8, 1953, by the Secretary of the Interior are hereby adopted and incorporated by reference in this contract as a code for health and safety in bituminous and lignite mines of the parties of the first part.

(b) *Enforcement*

(1) Reports of the federal coal mine inspectors: Whenever inspectors of the United States Bureau of Mines, in making their inspections in accordance with authority as provided in Public Law 49 and Public Law 552 find there are violations of the Federal Mine Safety Code and make recommendations for the elimination of such noncompliance, the operators shall promptly comply with such recommendations, except as modified in paragraph two of this subsection.

(2) Whenever either party to the contract feels that compliance with the recommendations of the federal mine inspectors as provided above would cause irreparable damage or great injustice, they may appeal such recommendation to the Joint Industry Safety Committee as hereinafter provided.

(c) *Review and Revision*

In order to carry out the intent and purposes of the agreement affecting the Federal Mine Safety Code it is agreed that representatives of the United Mine Workers of America and the coal operators signatory hereto shall hold joint consultations with the United States Bureau of Mines looking toward review and appropriate revision of the Federal Mine Safety Code. Any revised code that is agreed upon between the aforementioned parties, when adopted by the parties, shall be adopted and incorporated by reference into this agreement in place of the code adopted and incorporated in the National Bituminous Coal Wage Agreement of 1950 and continued under this agreement.

(d) *Joint Industry Safety Committee*

There is hereby established under this agreement a Joint Industry Safety Committee composed of four members, two of whom will be appointed by the Mine Workers and two of whom will be appointed by the operators, whose duty it shall be to (1) arbitrate any appeal which is filed with it by any operator or any mine worker who feels that any reported violations of the code and recommendation of compliance by a federal coal mine inspector has not been justly reported or that the action required of him to correct the violation would subject him to irreparable damage or great injustice; and (2) to consult with the United States Bureau of Mines in accordance with the provisions of Section (c) above.

(e) *Mine Safety Committee*

At each mine there shall be a mine safety committee selected by the local union. The committee members while engaged in the performance of their duties, with the following exception, shall be paid by the local union. When the mine safety committee is making an investigation of an explosion and/or a disaster, they shall be paid by the company at their regular rate of pay for the hours spent making such investigation, provided there is not a more favorable local agreement or practice already in effect. The committee at all times shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation law of the state where such duties are performed.

The mine safety committee may inspect any mine development or equipment used in producing coal. If the committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the committee believes an immediate danger exists and the committee recommends that the management remove all mine workers from the unsafe area, the operator is required to follow the recommendation of the committee.

If the safety committee in closing down an unsafe area acts arbitrarily and capriciously, members of such committee may be removed from the committee. Grievances that may arise as a result of a request for removal of a member of the safety committee under this section shall be handled in accordance with the provisions providing for settlement of disputes.

The safety committee and operators shall maintain such records concerning inspections, findings, recommendations, and actions relating to this provision of the agreement as may be required, and copies of all reports made by the safety committee shall be filed with the operators.

(f) The International Union, United Mine Workers of America, may designate memorial periods not exceeding a total of ten (10) days during the term of this agreement at any mine or operation provided it shall give reasonable notice to the coal company.

* * * * * * *

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately: (The parties will not be represented by legal counsel at any of the steps below.)

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the mine committee.

3. Through district representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and

two by the operators. Neither the Mine Workers' representatives on the board nor the operators' representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

5. Should the board fail to agree the matter shall, within twenty (20) days after decision by the board, be referred to an umpire to be mutually agreed upon by the operator or operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the operator or operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

* * * * * * * *

MISCELLANEOUS

1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

2. Any and all provisions of any contracts or agreements between the parties hereto or some of them whether national, district, local or otherwise providing

for a protective wage clause and a modication of this agreement or said agreements if a more favorable wage agreement is entered into by the United Mine Workers of America, are hereby rescinded, cancelled, abrogated and made null and void.

3. The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts.

4. Each operator signatory or who may become signatory hereto hereafter agrees to give proper notice to the president of the local union at the mine by the 18th day of each month that said operator has made the required payment to the United Mine Workers of America Welfare and Retirement Fund for the previous month.

* * * * * * * *

INTEGRATED INSTRUMENT

This agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after October 1, 1968.

* * * * * * * *

Plaintiffs Exhibit No. 2.

Plaintiffs Exhibit No. 2

(R. 20, 212)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
Towne House Apartments
660 Boas Street
Harrisburg, Pennsylvania 17102

May 26, 1971

Mr. Joe Kreon, President
Chartiers Local No. 6330
United Mine Workers of America
Box 225
Clarksville, Pennsylvania 15322

Dear Mr. Kreon:

This will acknowledge receipt of a copy of a letter dated April 30, 1971 signed by Thomas O'Brochta, John Ozonish and Frank Rutherford of the Safety Committee of Local 6330, United Mine Workers of America.

This letter involves an incident at the Gateway Mine of the Gateway Coal Company. Mine Inspector J. M. Hovanic of the 8th Bituminous District had, of course, previously reported this incident to me and I had discussed it with Deputy Secretary Dennis Keenan. Due to the information I have obtained and open discussions concerning this matter with Assistant Attorney General, Peter J. Dubinsky, I concur that the action taken by Mr. Hovanic to file information with the District Magistrate against Mr. Debreczeni, Mr. Masolovich and Mr. Bartosheck.

In view of the satisfactory record and good performance of these foreman in the past and the pending

Plaintiffs Exhibit No. 2.

legal action, we feel that no further action should be taken in this matter. The coal company is at liberty to return the three (3) assistant foreman to work if it so desires.

The objectives of the mining laws of this State is to enhance and assure mine safety. The penalty language in the Bituminous Mining Law was meant to penalize violators of the mining law to the extent deemed appropriate by the judiciary. Other than the above noted action on the part of our District Inspector and the penalty imposed by the magistrate, we feel that sufficient action has been taken by the Commonwealth in this case.

Yours truly,

DAVID R. MANEVAL
Acting Deputy Secretary

DRM/des

cc: Honorable Peter J. Dubinsky
Honorable Dennis J. Keenan
Mr. William Kegel

Plaintiffs Exhibit No. 6.

Plaintiffs Exhibit No. 6

(R. 34, 217-218)

GATEWAY COAL COMPANY
3 GATEWAY CENTER
PITTSBURGH, PA. 15230

June 8, 1971

Mr. James W. Kelly, President
District 4, United Mine Workers
Gallatin National Bank Building
Uniontown, Pennsylvania

Dear Mr. Kelly:

We have read with interest the statement attributed to you in the Uniontown Morning Herald, which quotes you as saying:

"Let Management join hands with us to provide safety first and production afterwards."

You are also quoted as saying that the work stoppage at Gateway Mine will be "resolved when management decides to keep the foremen off the job and leave the case be handled through the courts."

These statements, if correctly quoted, lead us to believe that we can come quickly to agreement on the main issue and end this work stoppage which is needlessly costing both our employees and the company.

We agree with your thought that management and the union should "join hands to provide safety first and production afterwards."

I hope we can agree that management's actions during the incident of April 15 demonstrated our commitment to this philosophy.

Plaintiffs Exhibit No. 6.

1. At the first indication of reduced airflow, an assistant foreman sought out the cause, called for assistance and pulled the power on his section.

2. Additional men were sent in to help locate the problem.

3. As soon as it was determined that more than a "stopping" was involved, the power was pulled throughout the mine and all men were ordered out of the mine.

4. All this was done even though the airflow throughout the mine was at all times above State and Federal standards and methane gas levels were well within acceptable levels.

5. The men were asked to return to work only after repairs had been made and the airflow carefully tested. Those who followed instructions and waited for a return to work were paid for a full shift.

These actions demonstrate Management's commitment to "provide safety first and production afterwards."

In the interest of ending this work stoppage, we are also willing to agree that the case should be handled through the courts.

Arbitration is the "court" provided in the contract between the company and the United Mine Workers for settlement of issues such as these. Why don't we use it?

At this time, we are willing to submit to final impartial arbitration the question of whether the mine is

made unsafe by the presence of these assistant foremen in the mine.

If the miners of Local 6330 will return to work immediately, we would be willing to bypass normal grievance procedures and submit the question to the panel board which is already formed to hear the grievance on reporting pay.

I cannot believe that either you, or the United Mine Workers union or the individual miners are refusing to work in a deliberate attempt to destroy the careers of two assistant foremen who only recently were rank- and-file miners like your members.

Let us agree that we are all interested primarily in having a safe mine, accept the fact that the specific issue of whether the assistant foremen accurately recorded airflow levels will be decided through the legal proceedings now filed, and seek a prompt decision on the question on which we cannot agree through arbitration.

What could be more fair — to the individual miners, the foremen, and the company?

Yours very truly,

WILLIAM G. KEGEL
President
Gateway Coal Company

Order of the District Court, Filed June 18, 1971

(Printed in the Appendix to the Petition for Certiorari at pages 1a through 4a)

Order of the United States District Court for The Western District of Pennsylvania dated June 23, 1971 (R. 183-184).

(Title Omitted in Printing)

Order

And now, this 23rd day of June, 1971, after consideration of the arguments of counsel, the order made June the 18th, 1971, at the proceedings captioned Gateway Coal Company versus United Mine Workers of America; District No. 4, United Mine Workers of America; and Local 6330, United Mine Workers of America at 71-567, is continued in full force and effect and will be continued until this Court has had an opportunity to act upon the application for a preliminary injunction heretofore presented and upon which application we have heard argument this day. The Court requires some short period of time to consider the arguments and the authorities presented and to consider the application heretofore made for preliminary injunction. It is understood that the temporary restraining order of June the 18th, 1971, will continue in full force and effect meanwhile. However, the Court will not delay more than five days the decision on the request for a preliminary injunction.

HON. BARRON P. MCCUNE

Memorandum and Order of District Court,
Filed June 28, 1971

(Printed in the Appendix to the Petition for Certiorari at pages 5a through 10a)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GATEWAY COAL COMPANY, Plaintiff,
v.
UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; LOCAL NO. 6330, UNITED MINE WORKERS OF AMERICA, Defendants.
} Civil Action No. 71-567

Answer and Counterclaim of Local Union No. 6330, United Mine Workers of America

ANSWER

1. Defendant herein, Local Union No. 6330, denies paragraph 1 of the complaint.

2. Said defendant admits that the Gateway Coal Company operates the Gateway Mine in Southwestern Pennsylvania. Defendant herein is without sufficient knowledge to admit or deny the remaining allegations contained in paragraph 2 of the complaint.

3. Said defendant admits that the United Mine Workers of America is an unincorporated labor organization having its principal office at 900 Fifteenth Street, N.W., Washington, D.C. The remaining allegations in paragraph 3 of the complaint are denied.

4. Said defendant admits that District 4, UMWA is an unincorporated labor organization having an office in the Gallatin National Bank Building, Uniontown, Pennsylvania. Defendant further admits that District 4, through its officers, agents and employees has ap-

parent authority to act on behalf of the UMWA members employed at the Gateway Mine. All other allegations of paragraph 4 of the complaint are denied.

5. The allegations of paragraph 5 of the complaint are admitted.

6. Said defendant admits that Local 6330 has for many years represented the production and maintenance employees at the Gateway Mine. Defendant specifically denies that Local 6330 or its members have ever entered into or ratified any collective bargaining agreement and that it or its members are parties to any existing collective bargaining agreement. The remaining allegations in paragraph 6 of the complaint are denied.

7. Said defendant admits that a document known as the National Bituminous Coal Wage Agreement of 1968 became effective on October 1, 1968, and is effective until September 30, 1971. It is specifically denied that Local 6330 or its members are parties to this agreement. The remaining allegations of paragraph 7 are denied.

8. Said defendant admits that the quoted portions of the National Bituminous Wage Agreement of 1968 are true and correct. The introductory allegations in paragraph 8 of the complaint are denied.

9. The allegations contained in paragraph 9 of the complaint are denied. Specifically, the quotations taken out of the text and the legal conclusions stated therein are denied.

10. Said defendant admits that a work stoppage began at the Gateway Mine on or about 12:01 a.m., June 1, 1971, and continued until the time the complaint herein was filed. Defendant specifically denies that it or any of its co-defendants engaged in any illegal activity what-

soever, including any breaches of any collective bargaining agreements. Defendant admits that Local Union 6330 passed a resolution to the effect that its members would not work with certain Assistant Mine Foremen who had been suspended by plaintiff because said foremen would render the Gateway Mine abnormally dangerous. Defendant admits that plaintiff was aware of the passage of this motion. The remaining allegations of paragraph 10 of the complaint are denied.

11. Said defendant specifically denies that the dispute herein is subject to the contract grievance procedure and that this defendant, or any of its co-defendants, has refused to honor any contract commitments.

12. Said defendant specifically denies that the dispute giving rise to the work stoppage is arbitrable and that the work stoppage was illegal. The remaining allegations in paragraph 12 of the complaint are denied.

13. Said defendant specifically denies that it or any of its co-defendants is responsible for any work stoppage, that plaintiff has lost its production as a result of the conduct of any of the defendants and that the daily production at the Gateway Mine is 8,500 tons. The remaining allegations in paragraph 13 of the complaint are denied.

14. Defendant specifically denies that plaintiff is threatened with any enormous loss, whether monetary or otherwise, that plaintiff is engaged in any business other than coal mining, that plaintiff is engaged in coke, chemical, iron and steelmaking, and that the work stoppage could result in unemployment of any steelworkers or any monetary losses. The remaining allegations in paragraph 14 of the complaint are denied.

15. Said defendant specifically denies that plaintiff has suffered or will suffer any harm or injury, irreparable or otherwise, that plaintiff has no adequate remedy at law or that plaintiff will suffer greater harm by the denial of injunctive relief than defendants, particularly Local Union 6330 and its members, will suffer if such relief is granted. The remaining allegations in paragraph 15 of the complaint are denied.

FIRST AFFIRMATIVE DEFENSE

The instant matter involves a labor dispute, and therefore, this Court lacks jurisdiction under the Norris-LaGuardia Act, 29 U.S.C.A. 101 *et seq.*, to grant injunctive relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted. The instant labor dispute arises out of a safety issue — which issue is not and never has been subject to the grievance procedure in the National Bituminous Wage Agreement of 1968 and its predecessor agreements.

THIRD AFFIRMATIVE DEFENSE

Defendant herein, Local Union 6330, and its members are not bound by the terms of the National Bituminous Wage Agreement of 1968 inasmuch as neither defendant nor its members ever ratified or adopted said agreement or even were given the opportunity to ratify or adopt said agreement.

FOURTH AFFIRMATIVE DEFENSE

In the alternative, even if Local Union 6330 and its members were and are bound by the terms of the 1968 collective bargaining agreement, said agreement con-

tains no "no strike" clause and such a clause may not be implied. Accordingly, the instant work stoppage is not in violation of the agreement.

FIFTH AFFIRMATIVE DEFENSE

The instant work stoppage arises out of safety conditions at plaintiff's mine. As provided by Section 502 of the Labor Management Relations Act, 29 U.S.C.A. 143, such a work stoppage cannot be considered a breach of any contract.

SIXTH AFFIRMATIVE DEFENSE

The instant dispute was settled by agreement between defendant District 4, UMWA and plaintiff's officials on April 18, 1971. Plaintiff, thereafter, breached that oral agreement.

COUNTERCLAIM

Count I

1. Defendant, Local Union No. 6330, United Mine Workers of America, is and has been for many years the collective bargaining agent for the production and maintenance employees employed at plaintiff's Gateway Mine.

2. Plaintiff, Gateway Coal Company, operates and has operated for several years the aforesaid Gateway Mine.

3. Plaintiff is a signatory, individually and through its bargaining representative, the Bituminous Coal Operators' Association, to labor agreements effective from April 2, 1964, through September 30, 1971, including the National Bituminous Wage Agreement of 1968, covering the Gateway Mine and the production and maintenance employees there employed.

4. This Court has jurisdiction of this counterclaim under Section 301 of the Labor Management Relations Act, 29 U.S.C.A. 185.

5. Defendant Local Union 6330 and its members are third party donee beneficiaries of the various collective bargaining agreements entered into between plaintiff, individually and through its collective bargaining representative, the Bituminous Coal Operators' Association, and the United Mine Workers of America.

6. The various collective bargaining agreements provide explicitly that the operators will operate their mines in accordance with state and federal mining laws and implicitly that the operators, including the plaintiff herein, Gateway Coal Company, will provide their employees with safe places to work.

7. On or about April 18, 1971, plaintiff and representatives of the United Mine Workers of America entered into an oral agreement whereby the members of Local Union 6330 would continue to work at plaintiff's Gateway Mine and certain suspended assistant mine foremen would continue to be suspended from their jobs at the Gateway Mine, pending a resolution of criminal charges then on file or to be filed against the said assistant foremen by a state mine inspector.

8. Plaintiff, on or about June 1, 1971, informed UMWA officials and members of Local Union 6330 that it was returning the suspended foremen to work on the midnight shift.

9. By returning these particular foremen to active duty prior to the resolution of pending criminal proceedings against said foremen, plaintiff breached the

oral agreement it had entered into on or about April 18, 1971, with the UMWA, and furthermore breached its contractual obligation to provide its employees with safe places to work.

10. As a result of the aforesaid breaches of both the 1968 Bituminous Wage Agreement and the April 18, 1971 oral agreement, the members of Local Union 6330 were forced to withhold their services and the member-employees lost several hundred of thousands of dollars in wages they would otherwise have received.

Count II

1. Defendant herein, Local Union 6330, incorporates by reference paragraphs 1 through 10 of Count I of this counterclaim.

2. Plaintiff herein is and has been required by its collective bargaining agreements since June, 1965, to operate its Gateway Mine in accordance with federal and state mining laws and regulations promulgated by the state and federal bureau of mines. More recently, since March 28, 1970, plaintiff has been required to operate its Gateway Mine in compliance with the 1969 Federal Coal Mine Health and Safety Act, 30 U.S.C.A. 801. All of the foregoing federal coal mine safety acts are acts regulating commerce.

3. This Court has jurisdiction of this cause under 28 U.S.C.A. 1337, 19 U.S.C.A. 185, and 42 U.S.C.A. 1983.

4. Plaintiff herein, Gateway Coal Company, has repeatedly and flagrantly violated provisions of the aforesaid mine safety acts, which acts are incorporated by reference in its collective bargaining agreements;

consequently, such violations constitute breaches of its contractual obligations.

5. The aforesaid violations of law and breaches of contract have, prior to June 1, 1971, caused plaintiff's employees and the members of defendant, Local Union No. 6330, to lose thousands of shifts of work.

6. On information and belief, plaintiff will in the future continue to violate its statutory and contractual obligations, which will result in injury or death to the members of Local Union No. 6330, in addition to substantial losses of wages.

7. The members of defendant Local Union No. 6330 have been and will continue to be irreparably harmed by plaintiff's statutory violations and breaches of contract. Local Union 6330's remedy at law is inadequate to protect the lives, limbs and livelihoods of its members.

WHEREFORE, defendant Local Union 6330 prays for the following relief:

A. That an order be entered, following the presentation of evidence, dismissing plaintiff's complaint, or, in the alternative, that plaintiff's request for permanent injunctive relief and money damages as against Local Union No. 6330 be denied;

B. That an order be entered permanently enjoining the Gateway Coal Company from violating the 1969 Federal Coal Mine Health and Safety Act and its contractual duty to provide its employees with safe places to work;

C. That judgment be entered awarding to Local Union No. 6330:

1. On behalf of its members, damages in the amount of $350,000 in wages lost as a result of the June 1, 1971 work stoppages;

2. On behalf of the United Mine Workers Bituminous Health and Welfare Fund, damages in the amount of $75,000 in royalty payments lost as a result of the June 1, 1971 work stoppages;

3. On behalf of its members and the aforesaid Health and Welfare Fund, damages for wages lost and royalty payments lost as a result of work stoppages since June 16, 1965, occasioned by plaintiff's breaches of contract and failure to provide its employees with safe places to work;

D. That Counsel for Local Union No. 6330 be granted reasonable attorneys' fees, costs and expenses:

1. To be paid by plaintiff or its bonding company pursuant to 29 U.S.C.A. 107, for resisting the imposition of injunctive relief or upon a determination that any injunctive relief granted was granted erroneously or improvidently; and

2. To be paid out of any fund to be created as a result of the affirmative relief sought in the counterclaim.

E. That the Court grant such other relief as it may deem appropriate.

LOCAL 6330 DEMANDS A TRIAL BY JURY.

Respectfully submitted,

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Answer by Plaintiff, Gateway Coal Company.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GATEWAY COAL COMPANY,
Plaintiff,
v.
UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; LOCAL NO. 6330, UNITED MINE WORKERS OF AMERICA,
Defendants.
} Civil Action No. 71-567

Answer by Plaintiff, Gateway Coal Company, to Counterclaim of Local Union No. 6330, United Mine Workers of America

Plaintiff, Gateway Coal Company, hereby files the following answer to the Counterclaim of Local Union No. 6330, United Mine Workers of America:

COUNT I

1. It is admitted that the Defendant, Local Union No. 6330, United Mine Workers of America, together with the United Mine Workers of America and District No. 4, United Mine Workers of America, are and for many years have been, the collective bargaining agent for the production and maintenance employees employed at Plaintiff's Gateway Mine.

2. The averments of Paragraph 2 are admitted.

3. The averments of Paragraph 3 are admitted.

4. The averments of Paragraph 4 are denied.

5. The averments of Paragraph 5 are denied.

Answer by Plaintiff, Gateway Coal Company.

6. The averments of Paragraph 6 are denied as stated. In further answer, the National Bituminous Wage Agreement of 1968 speaks for itself.

7. The averments of Paragraph 7 are denied.

8. It is admitted that on May 29, 1971, Plaintiff informed UMWA officials and officials of Local Union No. 6330 that it intended to return the suspended foremen to work on the midnight shift on June 1, 1971, pursuant to a directive from the State Bureau of Mines that the company was at liberty to return the two foremen to work, which directive was received from the State on May 29, 1971. Except to this extent, the averments of Paragraph 8 are denied.

9. The averments of Paragraph 9 are denied.

10. The averments of Paragraph 10 are denied.

COUNT II

1. Plaintiff incorporates by reference its Answer to Paragraphs 1 through 10 of Count I of the Counterclaim.

2. The averments of Paragraph 2 constitute conclusions of law which require no answer.

3. The averments of Paragraph 3 are denied.

4. The averments of Paragraph 4 are denied.

5. The averments of Paragraph 5 are denied.

6. The averments of Paragraph 6 are denied.

7. The averments of Paragraph 7 are denied.

WHEREFORE, Plaintiff, Gateway Coal Company, prays for dismissal of the Counterclaim filed by Local Union No. 6330, United Mine Workers of America.

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Counsel for Plaintiff, Gateway Coal Company

Of Counsel:
DANIEL R. MINNICK

Umpire Decision and Award, dated September 2, 1971

(Printed in the Appendix to the Petition for Certiorari at pages 29a through 51a)

Order.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 71-1641, 71-1642 and 71-1786

GATEWAY COAL COMPANY vs. UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; LOCAL NO. 6330, UNITED MINE WORKERS OF AMERICA	Appt. in 71-1641
UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA,	Appt. in 71-1642
LOCAL UNION NO. 6330,	Appt. in 71-1786

(D.C. Civil Action No. 71-567)

Present: KALONDER, HASTIE and ROSENN,
Circuit Judges.

Upon consideration of Motion of Local No. 6330 to Strike Appellee's Brief and Supplemental Appendix,

It is ORDERED that appellee's supplemental appendix be and hereby is stricken; and

It is Further ORDERED that motion of Local No. 6330 to strike appellee's brief be and hereby is denied.

By the Court,
KALODNER
Circuit Judge

Dated: February 11, 1972

Opinion of the Court of Appeals.

Opinion of the Court of Appeals for the Third Circuit, Filed July 18, 1972

(Printed in the Appendix to the Petition for Certiorari at pages 12a through 24a)

Judgment of the Court of Appeals for the Third Circuit, Filed July 18, 1972

(Printed in the Appendix to the Petition for Certiorari at pages 25a through 26a)

Order of the Court of Appeals for the Third Circuit denying Petition for Rehearing

(Printed in the Appendix to the Petition for Certiorari at pages 26a through 27a)